IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 10103 of 2005

Between:

1. T. Akash Jain, S/o Sri Kamal Chand Jain,
   R/o D.No. 27-4-30, Main Road, Visakhapatnam.

2. T. Ashish Jain, S/o Sri Kamal Chand Jain,
   R/o D.No. 27-4-30, Main Road, Visakhapatnam.

..... PETITIONERS

AND

Visakhapatnam Municipal Corporation, Visakhapatnam,

rep. by its Commissioner.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ, declaring the action of the Respondent in proposing to dispossess the petitioners from the land abutting the building bearing D.No. 10-50-51, situated in Ward No.19, Waltair Main Road, Visakhapatnam as illegal, arbitrary and unjust and consequently direct the respondent to drop all further proceedings in this regard.

Counsel for the Petitioners: MR.N.SIVA REDDY

Counsel for the Respondent: MR.N.RANGA REDDY (SC FOR MNICIPAL CROP. VSP.)

The Court at the admission stage made the following:

–

–

–

ORDER:

Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondent.

The petitioners seek a Writ of Mandamus declaring the action of the respondent in proposing to dispossess the petitioners from the land abutting the building bearing D.No.10-50-51 situated in Ward No.19, Waltair Main Road, Visakhapatnam as illegal, arbitrary and consequently direct the respondent to drop all further proceedings in this regard.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by the decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03.02.1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/ objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

The learned standing counsel appearing for the respondent does not dispute the above legal position.

Accordingly, the writ petition is disposed of directing the respondent not to dispossess the petitioners from the land in question without following the guidelines issued by the Division Bench in the above writ petition. No order as to costs.

__ _____

G. ROHINI, J

Date: 27-04-2005.

BSB

ASSISTANT REGISTRAR

// BY ORDER //

SECTION OFFICER

To

1. The Commissioner, Visakhapatnam Municipal

Corporation Visakhapatnam.

2. Two C.D copies.

-

-

-

-

-

-

-

-

-